



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2015-0483]

RIN 1625-AA00

Safety Zone; Ironman 70.3 Miami; Miami, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a safety zone on the waters of Biscayne Bay, east of Bayfront Park, in Miami, Florida during the 2015 Ironman 70.3 Miami, a triathlon. The Ironman 70.3 Miami is scheduled to take place on October 25, 2015. Approximately 2,500 participants are anticipated to participate in the swim portion of the event. No spectators are expected to be present during the event. The safety zone is necessary to ensure the safety of participants, vessels, and the general public during the event. Persons and vessels, except those participating in the event, are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Miami or a designated representative.

**DATES:** This rule is effective and will be enforced from 6 a.m. to 11 a.m. on October 25, 2015.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2015-0483 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Petty Officer Benjamin Colbert, Waterways Management Division, U.S. Coast Guard; telephone 305-535-4317, email Benjamin.R.Colbert@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive order
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

On May 27, 2015, the Miami Tri Events, LLC notified the Coast Guard that from 6:30 a.m. to 10 a.m., on October 25, 2015, it will organize a triathlon with a swim portion in Biscayne Bay east of Bayfront Park. In response, on August 14, 2015, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Mack Ironman 70.3, Biscayne Bay; Miami, FL (80 FR 48784). There, we stated why we issued the NPRM and invited comments on our proposed regulatory action related to this swim event. During the comment period that ended September 28, 2015, we received no comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. There was insufficient time between the close of the comment period and the event date to publish with 30 days or more before the effective date. In order to ensure the safety of the public during this event, the Coast Guard finds it necessary to establish this safety zone during the Ironman 70.3 swim event. Delay in publishing this rule would be impracticable, as the event will take place in less than 30 days. In addition to being impracticable, delay in publishing this rule would be contrary to public

interest. This rule is required in order to ensure the safety of event participants as they swim across a busy waterway.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1. The Captain of the Port Miami (COTP) has determined that potential hazards associated with this swim event warrant a temporary safety zone. This zone will ensure necessary precautions are in place to mitigate dangers to human life.

### **IV. Discussion of Comments and the Rule**

As noted above, we received no comments on the NPRM published on August 14, 2015. The regulatory text of this rule is unchanged from the rule proposed in the NPRM.

This rule will establish a safety zone that will encompass certain waters of Biscayne Bay, Miami, Florida. The safety zone will be enforced from 6 a.m. until 11 a.m. on October 25, 2015. The safety zone will establish an area around the swim portion of the event where non-participant persons and vessels are prohibited from entering, transiting, anchoring, or remaining within. Non-participant persons and vessels may request authorization to enter, transit through, anchor in, or remain within the event area by contacting the Captain of the Port Miami by telephone at 305-535-4472, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the event area is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative. The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

### **A. Regulatory Planning and Review**

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

The economic impact of this rule is not significant for the following reasons: (1) the safety zone will be enforced for only five hours; (2) although non-participant persons and vessels will not be able to enter, transit through, anchor in, or remain within the event area without authorization from the Captain of the Port Miami or a designated representative, they may operate in the surrounding area during the enforcement period; (3) non-participant persons and vessels may still enter, transit through, anchor in, or remain within the event area during the enforcement period if authorized by the Captain of the Port Miami or a designated representative; and (4) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

### **B. Impact on Small Entities**

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with

populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have

analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting less than 5 hours. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact

from this rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### **PART 165-- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add a temporary § 165.T07-0483 to read as follows:

**§ 165.T07-0483 Safety Zone; Ironman 70.3 Miami, Biscayne Bay; Miami, FL.**

(a) **Regulated area.** The following regulated area is a safety zone. All waters of Biscayne Bay located east of Bayfront Park and encompassed within the following points: Starting at Point 1 in position 25°46'44"N, 080°10'59"W; thence southeast to Point 2 in position 25°46'24"N, 080°10'44"W; thence southwest to Point 3 in position 25°46'18"N, 080°11'05"W; thence north to Point 4 in position 25°46'33"N, 080°11'05"W; thence northeast back to origin. All coordinates are North American Datum 1983.

(b) **Definition.** The term “designated representative” means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast

Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Miami in the enforcement of the regulated area.

(c) Regulations. (1) Non-participant persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by Captain of the Port Miami or a designated representative.

(2) Non-participant persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated area by contacting the Captain of the Port Miami by telephone at 305-535-4472, or a designated representative via VHF radio on channel 16. If authorization is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative.

(3) The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners and on-scene designated representatives.

(d) Enforcement period. This rule will be enforced on October 25, 2015 from 6 a.m. until 11:00 a.m.

Dated: October 16, 2015.

M. C. Long,  
Captain, U.S. Coast Guard,  
Acting Captain of the Port Miami.